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September 23, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 22, 2009

Case Number: TSO-0791

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, the Individual's access authorization should not be restored at this time.

I. Background

In 2007, the Local Security Office (LSO) interviewed the Individual about his financial delinquencies. DOE Ex. 4. The Individual acknowledged the delinquencies and stated that he would resolve them. *Id.* at 64, 66. He also stated that, if he were unable to meet his financial obligations in the future, he would obtain a second job. *Id.* at 65.

In late 2007, the Individual reported that he had received two speeding citations. DOE Ex. 8. In 2008, the Individual reported that he had received a citation for driving a vehicle with a suspended registration. DOE Ex. 7. In February 2009, the Individual reported that his wages had been garnished. DOE Ex. 6. The LSO requested a copy of the Individual's current credit report, DOE Ex. 11 at 2, which showed a number of delinquencies, DOE Ex. 5.

In May 2009, the LSO interviewed the Individual. DOE Ex. 3. The Individual acknowledged that he could not meet his financial obligations. *Id.* at 35. He attributed some of the indebtedness to co-signing loans for others. *Id.* at 56. He stated that he planned to file for bankruptcy and obtain a second job. *See, e.g., id.*

at 35, 56. The Individual also reported that, in April 2009, he had received another speeding citation. *Id.* at 64.

In June 2009, the LSO issued a Notification Letter, citing security concerns under 10 C.F.R. § 710.8(l) (Criterion L). DOE Ex. 1. The Notification Letter cited (i) excessive indebtedness and financial delinquencies and (ii) a pattern of non-compliance with laws, rules, and regulations.

The Individual requested a hearing before an Office of Hearings and Appeals (OHA) Hearing Officer. DOE Ex. 2. The OHA Director appointed me to serve as the Hearing Officer.

At the hearing, DOE Counsel did not present any witnesses. The Individual testified and presented two witnesses - his father and his supervisor. The Individual also submitted documentation concerning his financial status.

II. Governing Standards

Under Part 710, certain types of information raise concerns about whether an individual is eligible for access authorization. Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern exists, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, how frequently it occurred, how recently it occurred, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

III. Findings and Analysis

It is undisputed that the Individual has excessive indebtedness and financial delinquencies. DOE Ex. 3 at 35. It is also undisputed that, within the past two years, the Individual has received four citations: three for speeding, and one for driving a vehicle with a suspended registration. *Id.* at 4; DOE Exs. 7, 8.

The Individual's financial problems and his citations raise a Criterion L concern. Criterion L includes circumstances that tend to show that an individual is not "honest, reliable or trustworthy" or is subject to "pressure or coercion." Such circumstances include a pattern of financial irresponsibility and non-compliance with laws, rules, and regulations. 10 C.F.R. § 710.8(l); see also Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (the Adjudicative Guidelines) ¶¶ 19(a) ("inability or unwillingness to satisfy debts"); 19(c) ("a history of not meeting financial obligations"); 16(d) (a "pattern" of "rule violations").

An individual can mitigate Criterion L concerns by demonstrating a reformed attitude and a pattern of responsible behavior. See, e.g., *Personnel Security Hearing*, Case No. VSO-0153 (1997) (individual had resolved delinquencies over a one-year period preceding the hearing and was working to resolve the remaining delinquency at the time of the hearing).¹ See also Adjudicative Guidelines ¶ 20(c) (mitigating circumstance includes receipt of counseling and "clear indications that the problem is being resolved or is under control"). Similarly, an individual can mitigate concerns arising from non-compliance with laws, rules, and regulations by demonstrating that the noncompliance "is unlikely to recur." *Id.* ¶ 17(c).

The Individual attributes his increasing indebtedness to spending beyond his means when he was younger, a six-month lapse in employment in 2005, and co-signing loans for others. Transcript of Hearing (Tr.) at 31, 36, 45, 47, 51. After the suspension of his clearance, the Individual consulted a credit counseling firm. Tr. at 48; Ind. Ex. 7. The firm prepared a schedule showing the Individual's income and living expenses, but did not reflect court-ordered child support or debt payments. Ind. Ex. 7; Tr. at 53. The Individual consulted a lawyer, who recommended filing for bankruptcy. Tr. at 49. The Individual is currently making payments to the lawyer, and expects to file a bankruptcy petition in the near future. Ind. Exs. 9, 10. The Individual also expects to obtain a second job. Tr. at 49. As for his citations, the Individual paid the fines, Ind. Exs. 1-4, and he testified that he will obey the law in the future, Tr. at 71. The Individual's supervisor views the Individual's character and work performance as outstanding. Tr. 10-12, 16-18, 23. The Individual's father views the Individual as honest and involved with his family and community. Tr. at 27. The Individual's father corroborated the

¹Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>

Individual's testimony concerning his efforts to resolve his financial problems and his reformed attitude toward speeding. Tr. at 26, 33-34.

The foregoing is not sufficient to mitigate the Criterion L concerns. Although the Individual has taken the initial steps to resolve his financial problems, the Individual still has excessive indebtedness and financial delinquencies, and he has not yet demonstrated a pattern of living within his means. Accordingly, it is too early to conclude that the Individual has demonstrated a reformed attitude and a pattern of financial responsibility. See, e.g., *Personnel Security Hearing*, Case No. TSO-0645 (2008) (credit counseling plan recent and not yet fully implemented). Similarly, although the Individual testified that he will obey the traffic laws in the future, the recent nature of his citations make it too early to conclude that the Individual has demonstrated a reformed attitude and pattern of responsible behavior with respect to the traffic laws.

IV. Conclusion

The Individual has not resolved the Criterion L concerns set forth in the Notification Letter. For that reason, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet N. Freimuth
Hearing Officer
Office of Hearings and Appeals

Date: September 23, 2009